

1211 MISCELLANEOUS COMPLIANCE FOR ADOT PROJECTS

1211-1 Subletting the Contract

Section 108.01 of the 1990 Standard Specifications provides that the Contractor shall perform with his own organization, contract work amounting to not less than 50 percent of the original contract cost and 1996 and 2000 Standard Specifications not less than 40 percent. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the Engineer or his authorized representative and such consent, when given, shall not be construed to relieve the Contractor of any responsibility for the fulfillment of the contract.

There are two acceptable procedures for subcontractor approval. Procedure 1 is the most labor intensive and cumbersome. Procedure 2 (Subcontractor Request Form) is the preferred method as it eliminates paperwork and ensures that the subcontractor has received the required documents.

A written request to subcontract portions of the work, and a signed and executed copy of the subcontract along with the required attachments shall be made to the Resident Engineer and approved by the Assistant State Engineer, Construction, prior to the performance of any work by the proposed Subcontractor. See Exhibits 1211-1-1A, 1211-1-1B, 1211-1-1C, 1211-1-1D and 1211-1-1E.

Resident Engineers should verify that subcontracts contain all the same federal contract provisions that are included in the prime contract. Subsection 108.01 requires that all subcontracts be submitted to the Department for review and approval. The Field Office should verify that the required provisions are contained in each subcontract.

The subcontract needs to contain the contract items to be sublet, with quantity, unit bid price and monetary amount for each. If the item is to be partially subcontracted, it should be noted as such (i.e., place only, haul only, etc.). Any contractual agreements between the Contractor and the Subcontractors covering contract items of work will be counted towards the permissible amount of subcontract work.

Before this request for permission to sublet, assign or otherwise dispose of any portion of the contract can be granted, the following requirements must be met:

Procedure 1:

A signed and executed copy of the subcontract must be received. All of the provisions and requirements set forth in the Contractor's contract must be fully incorporated in and attached to the subcontract. These include:

A) For Federal Aid Projects: (Refer to Example 1 at the end of this chapter.)(Example 1211-1-1B.)

- Certification with Regard to the Performance of Previous Contracts (April 1969)
- FHWA Form 1273, Required Contract Provisions
- Standard Federal E.E.O. Construction Contract Specifications
- Notice of Requirement for Affirmative Action to Ensure E.E.O.
- E.E.O. Compliance Reports Federal Aid Projects
- Federal Aid Proposal Notices
- Wage Determination Decision

B) For Non Federal Aid Projects with Executive Order Provisions: (Refer to Example 2 at the end of this chapter.)

Certification with Regard to the Performance of Previous Contracts (July 1, 1975)
Standard Federal E.E.O. Construction Contract Specifications
Notice of Requirement for Affirmative Action to Ensure E.E.O.
Executive Order 75-5
Compliance Reports Non-Federal Aid Projects

- C) For Non Federal Aid Projects without Executive Order Provisions:
No required attachments

Procedure 2:

The Subcontractor Request Form (SRF) (Exhibit 1211-1-1E) is a streamline form to use in requesting approval for subcontractors. Using this form will save time, eliminate excessive paper and ensure the Subcontractor receives all the necessary documents. The SRF and instructions are included in the Contractor's Award Letter packet. Field Reports also has an Excel version of the form that can be sent via e-mail.

SUBCONTRACTOR REQUEST FORM INSTRUCTIONS

PRIME CONTRACTOR:

1. The Prime fills out the form.
2. The Prime gives applicable documents 3-10 to the Subcontractor.
3. The Prime and Subcontractor sign and date the SRF.
4. The Prime faxes or delivers the SRF and subcontract to the ADOT Field Office.

FIELD OFFICE:

5. Faxes or delivers SRF and subcontract to Field Reports.

FIELD REPORTS:

6. Verifies information.
7. Obtains Assistant State Engineer's signature.
8. Faxes approved SRF to Field Office.
9. Faxes approved SRF to Prime.

For all Federal Aid contracts with DBE goals, the Contractor's "DBE Intended Participation Affidavit" is a condition of award. In accordance with the Special Provisions, the Contractor is required to submit copies of legally binding agreements with the DBE indicated on the affidavit at the preconstruction conference. The agreements may be purchase orders, subcontracts, or any other form of agreement. Approval for DBE Subcontractors will be considered prior to other Subcontractors.

1211-3 Hauling Only

Unless the hauling is by the commercial supplier/entity or offsite material production plant, trucking companies are to be authorized as Subcontractors.

1211-4 Verbal Approval

Subcontractors are not allowed to start any work until they have been approved by the Assistant State Engineer, Construction. Written notification will be given by the Headquarters office when a Subcontractor has been approved (Exhibit 1211-1-1B, 1211-1-19C, 1211-1-1D and 1211-1-1E). If written notification has not been received by the time work is ready to begin, and all required documents were timely submitted, then

verbal approval may be obtained from the Field Reports Section at (602) 712-7301.

ABC CONSTRUCTION, INC.
1234 N. Main Street
Phoenix, AZ 85000

February 11, 2000
(602) 999-6789

Arizona Department Of Transportation
1052 E. Arizona Avenue
Phoenix, AZ 85017

Attn.: Ms. Jane Doe
Resident Engineer

RE: Project AZ-10-3(789)/TRACS H123401C
Phoenix-Casa Grande Hwy.

In accordance with the Standard Specifications, Subsection 108.01, we respectfully request to subcontract portions of the work on the above referenced project as shown by the attached breakdown. Recap is as follows:

TO: Turfs R Us, P.O. Box 111, Phoenix, AZ (License #123456)

8050003 Seeding (Class II)	2 Acre	\$1,500.00	<u>\$3,000.00</u>
		Total:	\$3,000.00

TO: John Doe Construction, P.O. Box 789, Tucson, AZ (License #020304)

4040036 Asphalt Cement (3/4")			
(Partial Haul Only)	1,362 Ton	\$ 18.00	\$24,516.00
4040038 Asphalt Cement (Base Mix)			
(Partial, Haul Only)	2,068 Ton	18.00	37,224.00
4040161 Asphalt Rubber Material			
(Partial Haul Only)	623 Ton	18.00	11,214.00
4040126 Fog Coat (Complete-In-Place)	53 Ton	180.00	<u>9,540.00</u>
		Total:	\$82,494.00

TO: ELECTRIC CO., Casa Grande, AZ (License #563498)

8080039	Backflow Prevention Unit		
	(Partial, Electrical Wiring Only)	2 Each \$2,500.00	<u>\$5,000.00</u>
			\$5,000.00

Exhibit 1211-1-1A. Subcontractor Request Letter



Arizona Department of Transportation
Intermodal Transportation Division

206 South Seventeenth Avenue Phoenix, Arizona 85007

December 07, 2001

Dick Wright
State Engineer

Victor M. Mendez
Director

EDWARD KRAEMER & SONS, INC.
P.O. BOX 220
PLAIN, WI 53577-0220

RE: AC* 060-B(2)B/H513701C
WICKENBURG - PHOENIX HIGHWAY (US 60)
27TH AVE/THOMAS&91ST AVE RAMPs

Dear Sirs:

According to the appropriate Contract Provisions, the State Engineer has approved this date the subletting of the work items described in the subcontracts for the following designated subcontractor(s):

GIL'S DRILLING & EXCAVATING, subcontract dated October 10, 2001

With the approval of these subcontracts the total amount subcontracted to date is \$9,038,106.07 which is 37.3 % of the total contract amount.

Your attention is directed to the contract provisions entitled Required Provisions for Federal Aid Contracts, Form PR 1273 that requires for all subcontracts entered into in connection with this work, that the provisions and requirements listed below be incorporated.

1. Form FHWA 1273, Revised April 1993.
2. Certification with Regard to the Performance of Previous Contracts.
3. Standard Federal EEO, Construction Contract Specifications, April 15, 1981.
4. Affirmative Action to Insure Equal Employment Opportunity, April 15, 1981.
5. Compliance Reports, October 15, 1998.
6. Certification of Nonsegregated Facilities, September 29, 1975.
7. The Wage Determinations Decision.
8. Training Special Provisions.

It is mutually agreed that by receipt of this letter and by proceeding with the work as authorized, the contractor certifies that he has included the above listed document in all copies of his subcontract(s).

Very truly yours,

Julio Alvarado
Assistant State Engineer
Construction Group

JA:LH:eh

cc: District Engineer
Resident Engineer - 7746
Civil Rights Office



Exhibit 1211-1-1B Subcontractor Approval Letter



Arizona Department of Transportation
Intermodal Transportation Division
206 South Seventeenth Avenue Phoenix, Arizona 85007

July 30, 2001

Dick Wright
State EngineerVictor M. Mendez
Director

ACHEN-GARDNER ENGINEERING, L.L.C.
550 SOUTH 79TH STREET
CHANDLER, AZ 85226-4706

RE: S 202-C-502/H515002C
PRICE / SANTAN TI

Dear Sirs:

According to the appropriate Contract Provisions, the State Engineer has approved this date the subletting of the work items described in the subcontracts for the following designated subcontractor(s):

ASPHALT BUSTERS, subcontract dated July 30, 2001
CONTRACTORS WEST, subcontract dated July 30, 2001
PAVEMENT MARKING, INC., subcontract dated July 30, 2001
ENVIRO-SYSTEMS, subcontract dated July 30, 2001

With the approval of these subcontracts the total amount subcontracted to date is \$113,818.75 which is 5.7 % of the total contract amount.

Your attention is directed to the contract provisions entitled Required Provisions for Federal Aid Contracts, Form PR 1273 that requires for all subcontracts entered into in connection with this work, that the provisions and requirements listed below be incorporated.

1. Standard Federal EEO Construction Contract Specification, April 15, 1981.
2. Affirmative Action Requirements, EEO, April 15, 1981.
3. Executive Order 75-5, November 25, 1980.
4. Compliance Reports, October 15, 1998 .

It is mutually agreed that by receipt of this letter and by proceeding with the work under this subcontract, the contractor certifies that he has included the above listed documents in all copies of this subcontract.

Very truly yours,

Julio Alvarado
Assistant State Engineer
Construction Group

JA/LH/apa
cc: District Engineer
Resident Engineer - 4090
Civil Rights Office



Exhibit 1211-1-1C Subcontractor Approval Letter



Victor M. Mendez
Director

Arizona Department of Transportation
Intermodal Transportation Division
206 South Seventeenth Avenue Phoenix, Arizona 85007

Dick Wright
State Engineer

April 15, 2002

SOUTHERN ARIZONA PAVING & CONSTRUCTION, CO
4102 E ILLINOIS
TUCSON, AZ 85714

RE: I 008-B-501/H524201C
YUMA - CASA GRANDE HIGHWAY (I-8)
BIANCO ROAD - JCT I-10

Dear Sirs:

According to the appropriate Contract Provisions, the State Engineer has approved this date the subletting of the work items described in the subcontracts for the following designated subcontractor(s):

BARRICADE & LIGHT RENTAL, INC., subcontract dated April 10, 2002
PAVEMENT MARKING, INC., subcontract dated March 28, 2002

With the approval of these subcontracts the total amount subcontracted to date is \$86,403.50 which is 54.6 % of the total contract amount.

It is further agreed that the contractor shall fully inform and make available to his subcontractor all contract provisions applicable to the above referenced project.

Very truly yours,

Julio Alvarado
Assistant State Engineer
Construction Group

JA:LH:apa

cc: District Engineer
Resident Engineer - 8133



Exhibit 1211-1-1D Subcontractor Approval Letter

SUBCONTRACTOR REQUEST FORM

It is ADOT's responsibility to insure that prime contractors employ subcontractors in accordance with various Federal and State regulations. With this in mind, ADOT has implemented a subcontractor approval streamlining process which will insure compliance while decreasing the required approval time. Field Reports fax #602-712-3067 / 206 S. 17th Ave, MD 133A Phoenix, AZ 85007

ADOT PROJECT/TRACS NO. I 008-B-501 / H524201C
 PRIME CONTRACTOR: Southern AZ Paving PRIME CONTRACT AMOUNT \$ \$ 158,298.00
 TELEPHONE NO. (520) 555-1212 ESTIMATED SUBCONTRACT AMOUNT \$ \$ 42,000.00
 FAX NO. (520) 555-1213
 SUBCONTRACTOR: Pavement Marking, Inc. DBE: Yes ☐ No ☒
 ADDRESS 3232 S. State Avenue
 CITY, STATE, ZIP Tucson, AZ 85714
 PHONE (520) 555-1234 SUBCONTRACTOR LICENSE NO. ROC 123456

SUBCONTRACTED BID ITEMS No.'s
 (Specify Joint Items)

7040003
7040004
7040072
7040074

SUBCONTRACTED NON-PAY ITEMS
 (Provide Description of Work)

CERTIFICATION:

The Prime Contractor and Subcontractor certifies the following :

- A) The Subcontractor has received applicable Documents No. 3-9 per Special Provisions.
- B) The Prime Contractor and Subcontractor will execute Documents No. 1 and 2 prior to the start of Subcontractor's work. DBE subcontracts to be submitted at Pre-Construction conference (Spec. 108.01/03)
- C) Upon execution, Prime Contractor will send the Field Office and Field Reports copies of Documents No. 1 and 2
 - 1. Subcontract Agreement containing the above Bid Items of Work
 - 2. Certification, Contracts or Subcontracts, subject to EEO, March 31, 1989 (Executive Order 11246)
 - 3. FHWA 1273-(Rev.3-94)
 - 4. Standard Federal EEO, Construction Contract Specifications, April 15, 1981
 - 5. Affirmative Action to Insure Equal Employment Opportunity, April 15, 1981
 - 6. Compliance Reports, October 25, 1998
 - 7. Certification of Nonsegregated Facilities, September 29, 1975
 - 8. Wage Determination Decision # _____ Mod # _____ (As per special provisions for above referenced project)
 - 9. Training Special Provisions

Southern AZ Paving 9/30/04
 Authorized Prime Contractor Signature/Date
Vice President, Operations
 Title

Pavement Marking 9/30/04
 Authorized Subcontractor Signature/Date
owner
 Title

FOR ADOT USE ONLY

According to the appropriate Contract Provisions, the Assistant State Engineer has approved this date the subletting of the work items described above.

Total Subcontracted To Date: \$ 42,000
 Org: 8133

Percentage Subcontracted To Date: 26.5 %
 Subcontract in Field Reports: YES ☒ NO ☐

Asst State Engineer
 Assistant State Engineer - Construction Group

10/6/04
 Date

Revised 09/29/2004

1211-5 Lower-Tier Subcontractors

Approved Subcontractors will be allowed to sublet any part of the assigned work to lower-tier Subcontractors providing compliance with the following provisions:

1. A formal request along with the signed and executed copy of the subcontract from the Subcontractor should be made to the Contractor requesting such action. The request and subcontract must show the name and address of the proposed lower-tier Subcontractor, item number, description of item, quantity, unit, price and amount.
2. The Contractor shall make written request on behalf of any lower-tier Subcontractor to the Department for approval.
3. The Contractor will be held responsible that all provisions and requirements for Federal Aid contracts and Non Federal Aid contracts are incorporated into each subcontract, regardless of tier, and for compliance with these provisions by his Subcontractors.
4. The Special Provisions included in all Federal Aid contracts stipulate that a DBE Subcontractor may enter into second-tier subcontracts which are consistent with normal industry practices. However, items which are second-tier subcontracted by a certified DBE Subcontractor will not be counted toward the participation goal unless:
 - A. The work is second-tier subcontracted to another certified DBE; or,
 - B. No more than 30 percent of the DBE subcontract is second-tier subcontracted to a Non-DBE.

1211-6 Subcontractor Versus Supplier

Suppliers need not be authorized as a Subcontractor providing:

1. The supplier does not perform a function which is a part of the construction process itself, i.e., spraying asphalt onto the roadway, erection of bridge members, grading and compacting surface materials, etc.
2. The supplier does not establish a fabricating or processing facility expressly for the use of the project, i.e., direct use of a Department material pit for the project, relocation of processing plants where the project is the only recipient of the product, etc.
3. The supplier in producing and delivering materials does not perform any work on the project.

1211-7 Contractor Versus Subcontractor

The ADOT Standard Specifications, Section 108.01 and the Federal Contract Provisions, Form FHWA 1273 of each contract spell out the subcontracting requirements for subletting a contract. These sections, in general, state there are only two options when it comes to the administration of a contract:

- The Contractor performs all of the work with its own organization, or
- The Contractor sublets or assigns some portion of the work to another entity.

Any contract work not performed by the Contractor is considered a subcontract in the context of these requirements. This is explained in Section VII, Paragraph 4 where it says "No portion of the contract shall be sublet, assigned or otherwise disposed of . . .". This means any agreement (such as sublets, purchase orders, rental agreements) by the Contractor to have another company/party etc. perform contract work on the project is technically a subcontract, and as further stated in this section, written consent of this subcontract is needed prior to beginning work and the subcontract needs to include pertinent provisions and requirements of the Contractor's contract. The only exception to this would be a supplier to the project such as someone supplying concrete, who just unloads the concrete on the project site either into a pump or into forms.

A further clarification of Section VII, Paragraph 2 states "Its own organization shall be construed to include only workers employed and paid directly by the Prime Contractor and equipment owned or rented by the Prime Contractor, with or without operators." The key to this statement is, Who is paying the employees? In this case all of these employees are to be paid by the Contractor. This includes the obvious, his own employees, but also any operators that may come with a rental operator type agreement. If the employee under a rental operator agreement is not paid by the Contractor but is paid by the company the equipment was rented from, then this is technically work disposed of as discussed above, and is a subcontract.

The following are examples to further identify the Contractor/Subcontractor relationship:

- Situation - A bridge deck is poured with a concrete pump; the concrete is supplied by one company and the concrete pump is supplied by another. Is the concrete pump operation a subcontract?

If the concrete pump is supplied to the project without an operator then this is just rented equipment and a subcontract is not needed.

If the concrete pump is supplied with an operator then two scenarios can occur. If the operator is paid by the Contractor and shows on the Contractor's payroll, then this is considered "its own organization" and a subcontract is not needed. If the operator is paid by the company that rents or leases the concrete pump, then this is work disposed of by the Contractor (someone else is performing work on the project) and a subcontract is required, and the Subcontractor is obligated to submit the certified payrolls. The subcontract itself would include both the rented equipment and the operator expenses.

- Situation - Trucking is taking place on the project site with rented trucks with operators, and with trucks that are owner-operators.

If the trucks are rented by the Contractor and the driver is an employee of and paid directly by the Contractor on their payrolls, then this is considered "its own organization" and is not a subcontract.

If the trucks are rented by the Contractor and the Contractor payroll shows these trucks on their payroll as owner-operator, then this is still considered "its own organization" and a subcontract is not needed.

If the Contractor rented the truck and pays another company directly for the truck and operator, and the other company pays the operator, then this is work disposed of by the Contractor, and a subcontract and certified payrolls are needed.

If the Subcontractor rents or acquires other trucks, and all of the drivers are employees of the subcontractor and show up on his payrolls, then no further action is required. However, if the Subcontractor rents trucks from another company, and this company pays for the operators, then this is technically a second tier subcontract and all of the subcontracting and certified payroll requirements apply.

1211-8 Unauthorized Subcontractors

Should an unauthorized Subcontractor be noticed performing any work on the project they are to be shut down immediately until such time that a subcontract has been submitted and approved.

1211-9 Authorized Signature Form

An Authorized Signature Form (notarized) must be submitted to Contract Accounting, Mail Drop 204B for each Federal and Non Federal aid project.

When an employee is no longer authorized to sign or the level of authority has changed, a revised signature form must be submitted. (See blank forms at the end of chapter.)

1211-10 Release of Retention

Refer to Subsection 109.06 of the Construction Manual and the Standard Specifications. The procedures for Release of Retention are:

1. The Contractor submits to the Resident Engineer a letter of request for release of retention and a consent of the Contractor's surety to such payment.
2.
 - A) The Resident Engineer will review the items contained in the Retention Release Request Memo. If the items are in compliance, the Resident Engineer prepares a Retention Release Request Memo. This memo, attachments, and the required documents, as stated in the memo, are sent to Field Reports Section. (See Exhibits 109.06-1a and 109.06-1b).
 - B) If there are items from the Request Memo which are not current or in compliance, then the Resident Engineer shall write a letter to the Contractor stating the reasons why the request cannot be granted at this time.

The release of retention may involve substantial amounts of money so the Resident Engineer must be responsive and implement one of the two measures stated above in a timely manner. If one of the deficient items involves a specialty area such as Labor Compliance or the DBE program, then the Resident Engineer should work with the Contractor and the appropriate ADOT section to assist in resolving the outstanding issues.

If the project has been completed, and the final estimate has been received in Field Reports Section, the Contractor may request a release of retention from Field Reports. In this instance, the Resident Engineer need not be involved in the release but the same documents are required of the Contractor.

If the project has been completed, and the final estimate has not been submitted to Field Reports, the field office should submit the First and Final Time Reports and completion memo to Field Reports if they have not already done so.

If the project is in Phase II, the field office should submit copies of the Weekly Time Reports and completion memo for Phase I of the project.

1211-11 Consultant Field Offices

Consultant Field Offices must provide Field Reports with a letter, prior to start of work, with the following information:

1. Physical office address, and phone number(s).
2. Resident Engineer for this project and his/her E-mail address.
3. Office Manager for this project and his/her E-mail address.